

**BEFORE THE
POSTAL REGULATORY COMMISSION**

Competitive Product Prices
Parcel Select
Parcel Select Contract 44

Docket No. MC2021-42

Competitive Product Prices
Parcel Select Contract 44 (MC2021-42)
Negotiated Service Agreement

Docket No. CP2021-43

**RESPONSE OF THE PACKAGE SHIPPERS ASSOCIATION IN OPPOSITION TO
MOTION FOR ACCESS TO NON-PUBLIC MATERIALS**

(August 22, 2022)

The Package Shippers Association (PSA) hereby responds in opposition to the August 15, 2022, Motion of the Strategic Organizing Center (SOC) Requesting Access to Non-Public Materials. Given the nature of the non-public information requested and the nature of the request, PSA urges the Commission to deny the motion.

In its renewed motion, SOC states that it is now seeking access to the “full, unredacted versions” of Parcel Select Contract 44, which it believes to be the “most commercially significant negotiated service agreement (NSA)” between the Postal Service and Amazon. Again, PSA cannot know whether SOC has now identified the correct contract, but the issues raised by this request are broader than any individual shipper and will have far-reaching implications. As a representative of package shippers, with a mission to foster competition in the parcel delivery market, PSA reiterates its concern that permissive access to, or the disclosure of, the non-public version of any shipper’s contract would necessarily involve disclosure of commercially sensitive

information, to the ultimate detriment of shippers, the Postal Service, and fair competition in the package delivery market.

The nature of the non-public information requested matters. As noted previously, PSA has not opposed requests for access of the Postal Service’s non-public information, including financial or costing data, where such information is necessary for a party to participate in a compliance proceeding or to aid in the preparation of a petition to improve the existing cost models. Requests for access to extremely sensitive commercial information regarding an individual package shipper’s service contract are different.

Since the enactment of the Postal Accountability and Enhancement Act, PSA has consistently advocated that the strict confidentiality of contracts entered into with individual package shippers is essential to the success of the Postal Service’s competitive package business.¹ Allowing third parties, such as SOC, to access information of the most extreme competitive sensitivity—even if under protective conditions—would erode confidence and create business risks for package shippers entering contracts with the Postal Service. Notwithstanding the integrity of the Commission’s protective conditions, increased access necessarily leads to an increased risk of disclosure. Package shippers are concerned that permissive access rules will increase the risk of disclosure and the likelihood of commercial harm. Indeed, doubts among individual shippers that contract prices, key terms, and related financial materials will remain confidential would have far-reaching effects on the Postal Service’s competitive products business, the financial health of the Postal Service, and the health of a competitive package delivery market by “deter[ring] private

¹ Docket No. RM2017-3, Comments of the Parcel Shippers Association Pursuant to Commission Order No. 3673, at 6-7 (Mar. 20, 2017)(“A major success of PAEA has been that, consistent with the practice of Postal Service competitors of negotiating customized deals with its customers, the competitive rate system allows the Postal Service the freedom to negotiate competitive product NSAs with its customers . . . Critical to the success of the competitive product NSAs has been the Commission’s vigilance in keeping the contents of these agreements confidential.”).

companies from doing deals with the Postal Service out of the fear that confidential, commercially sensitive information will be made public.”² Accordingly, PSA maintains that the “bar for justifying access to customer-specific NSA information” must be set “much higher.”³

Even assuming the instant motion is procedurally proper, the Commission’s access rules state that requests for access to non-public materials must contain a “detailed statement justifying the request for access.”⁴ SOC has not come close to meeting that standard. SOC’s conclusory allegations, without more, cannot be considered sufficient good cause. SOC requests access to prove legal theories that fail as a matter of law.⁵ The alleged violations of sections 101(b) and 101(e) fail for lack of jurisdiction. The alleged violations of section 403(c) based on suspected preferential treatment fail to acknowledge that section 3632(b)(3) expressly authorizes the Postal Service enter into service contracts with individual package shippers for “rates or classes not of general applicability.” 39 U.S.C. § 3632(b)(3). SOC’s stated goal of independently evaluating whether the contract complies with title 39 proves too much.⁶ As an initial matter, it ignores the fact that the Commission has already determined the contract complies with all applicable laws and that the Commission monitors and assesses all active agreements on a continuing basis as part of the annual compliance review. Additionally, if asking to “check the Commission’s work” alone were sufficient, every request would have to be granted, thus reading the good cause limitation out of the rule.

² *Id.* at 7 (citing Docket No. RM2007-1, Comments of the Parcel Shippers Association (April 6, 2007) at 22).

³ Docket No. RM2017-3, PSA Comments (Mar. 20, 2017) at 6-7.

⁴ 39 C.F.R. § 3011.301(b)(2).

⁵ *See* Docket Nos. MC2022-42 and CP2021-43, Motion by Strategic Organizing Center Requesting Access to Non-public Materials Under Protective Conditions, at 8 (Aug. 15, 2022).

⁶ *See id.*

The nature of the request also matters. SOC states that it seeks access to aid its investigation of the validity of a potential complaint pursuant to 39 U.S.C. § 3662.⁷ This statement should be dispositive in the Commission's denial of the motion. The access rules were never intended, and should not be construed, as an alternative to bypass the statutory and regulatory limitations on discovery in connection with complaint proceedings under section 3662. SOC cites no support in the regulatory history of the access rules that suggest the rules can be used to circumvent well established discovery limitations. If SOC believes the Postal Service is not operating in conformity with the law, it should file a complaint. Under section 3662 and the Commission's complaint rules, discovery could then only proceed on the basis of a Commission finding that the complaint raises material issues of fact or law.⁸ SOC is seeking an end-run around these well-established limitations by asking the Commission to grant it access to the most commercially sensitive information of third-party shippers as part of a fishing expedition that may or may not give rise to a future complaint. The Commission should deny the motion on this ground alone.

For the reasons stated above, including the substantial negative effect that granting outside parties access to shipper-specific NSA information would have on the Postal Service's ability to compete on a level playing field in the package delivery business, PSA urges the Commission to deny SOC's motion.

Respectfully submitted,

/s/

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⁷ See *id.*, at 2.

⁸ See 39 U.S.C. § 3662(b)(1)(A)(i); 39 C.F.R. § 3022.20.